

HOUSE BILL 673

By Johnson G

AN ACT to amend Tennessee Code Annotated, Title 4,
Chapter 21; Title 10, Chapter 7, Part 5 and Title
50, relative to insurance benefits.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 50, is amended by adding the
following as a new chapter:

50-12-101.

This chapter is known and may be cited as the "Tennessee Family Insurance
Act."

50-12-102.

As used in this chapter:

(1) "Application year" means the twelve-month period beginning on the
first day of the calendar week in which an individual files an application for family
leave insurance benefits;

(2) "Average weekly wage" means the average wages over the course of
the fifty-two (52) weeks prior to the start of the leave or, if the covered individual
was not employed for the entire fifty-two (52) weeks, then the average wages
over the course of the weeks when the covered individual was employed;

(3) "Commissioner" means the commissioner of labor and workforce
development or the commissioner's designee;

(4) "Covered individual" means a person who:

(A) Satisfies the minimum earnings requirements to qualify for
benefits under § 50-7-301;

(B) Meets the administrative requirements outlined in this chapter and in other law; and

(C) Submits an application;

(5) "Department" means the department of labor and workforce development;

(6) "Employee" means a person employed within this state by an employer;

(7) "Employer" has the same meaning as defined in 29 U.S.C. § 203;

(8) "Family and medical leave insurance benefits" means the benefits provided under this chapter;

(9) "Family member" means:

(A) A biological, adopted, or foster child; stepchild; or legal ward or child to whom the employee stands in loco parentis;

(B) A biological, foster, stepparent, or adoptive parent or legal guardian of a covered individual; a covered individual's spouse or domestic partner; or a person who stood in loco parentis when the employee or the employee's spouse or domestic partner was a minor child;

(C) A person to whom the employee is legally married under the laws of a state or jurisdiction of the United States;

(D) A grandparent or step-grandparent of the employee or the employee's spouse or domestic partner;

(E) A grandchild or step-grandchild of the employee or the employee's spouse or domestic partner;

(F) A biological, foster, or adopted sibling of the spouse or domestic partner of the sibling;

(G) A domestic partner registered as such under the laws of a state or jurisdiction of the United States; or

(H) Another person related by blood or whose close association with the covered individual is the equivalent of a family relationship;

(10) "Qualifying exigency" means a need arising out of a covered individual's family member's active duty service or notice of an impending call or order to active duty in the United States armed forces, including:

(A) Providing for the care or other needs of the service member's child or other family member;

(B) Making financial or legal arrangements for the service member;

(C) Attending counseling;

(D) Attending military events or ceremonies;

(E) Spending time with the service member during rest and recuperation leave;

(F) Spending time with the service member following a return from deployment; or

(G) Making arrangements following the death of the service member;

(11) "Serious health condition" has the same meaning as defined in 29 U.S.C. § 2611; and

(12) "State average weekly wage" means the state average weekly wage as calculated pursuant to § 50-6-102(14)(B).

50-12-103.

(a) Notwithstanding § 4-21-408 to the contrary, beginning on January 1, 2026, family and medical leave insurance benefits are payable to a covered individual who meets one (1) of the following requirements:

(1) Because of birth, adoption, or placement through foster care, is caring for a new child during the first year after the birth, adoption, or placement;

(2) Is caring for a family member with a serious health condition;

(3) Has a serious health condition that makes the covered individual unable to perform the functions of the position of employee; or

(4) Because of a qualifying exigency arising out of the deployment of a family member of the covered individual.

(b) Benefits are payable to a person who is not currently employed, but who is a covered individual meeting one (1) of the requirements listed in subdivisions (a)(1)-(4).

50-12-104.

The maximum number of weeks during which family and medical leave insurance benefits are payable in an application year is twelve (12) weeks.

50-12-105.

The amount of family and medical leave insurance benefits is determined as follows:

(1) The weekly benefit is eighty percent (80%) of an employee's average weekly wage up to a maximum benefit level of one thousand dollars (\$1,000).

However, annually, not later than October 1 of each year thereafter, the department shall adjust the maximum weekly benefit amount to be ninety percent (90%) of the state average weekly wage, and the adjusted maximum weekly benefit amount will take effect on January 1 of the year following the adjustment.

If an employee's average weekly wage is less than thirty dollars (\$30.00), then the weekly benefit must be thirty dollars (\$30.00); and

(2) Family and medical leave insurance benefits are not payable for less than one (1) day or eight (8) consecutive hours of family and medical leave taken in one (1) work week.

50-12-106.

(a) The state treasurer is responsible for determining the amount of premiums necessary to finance the family and medical leave insurance program annually, no later than October 1, for the coming calendar year. Beginning on October 1, 2024, the state treasurer shall set the premium as a percentage of employee wages based on sound actuarial principles.

(b) Beginning on January 1, 2025, an employee must pay premiums in an amount determined by the state treasurer under subsection (a).

(c) An employer shall collect the premium amount from each employee and shall remit the premium amount to the state treasurer, who shall transfer the premiums to the state treasury for deposit into the fund.

50-12-107.

(a) Upon the expiration of family and medical leave, an employer shall restore a covered individual who exercises the covered individual's right to family and medical leave benefits to the position held by the covered individual when the leave commenced, or to a position with equivalent seniority, status, employment benefits, pay, and other terms and conditions of employment, including fringe benefits and service credits that the covered individual was entitled to at the commencement of leave.

(b) During leave taken pursuant to § 50-12-103, the employer shall maintain healthcare benefits the covered individual had prior to taking the leave for the duration of

the leave as if the covered individual remained in employment continuously from the date the covered individual commenced the leave until the date the family and medical leave insurance benefits terminate. The covered individual shall continue to pay the covered individual's share of the cost of healthcare benefits as required prior to the commencement of the leave.

50-12-108.

(a) It is unlawful for an employer or another person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, a right protected under this chapter.

(b) An employer, temporary help company, employment agency, employee organization, or other person shall not discharge, expel, demote, or otherwise discriminate or take adverse employment action against a person because the person:

(1) Files, applies for, or uses benefits provided for under this chapter;

(2) Takes leave from work under this chapter;

(3) Communicates to the employer an intent to file a claim, a complaint, or an appeal in accordance with this chapter;

(4) Testifies, is about to testify, or assists in a proceeding under this chapter at any time, including the period in which the person receives family and medical leave insurance benefits under this chapter; or

(5) Exercises other rights under this chapter.

(c) It is unlawful for an employer's absence control policy to count paid family and medical leave taken under this chapter as an absence that may lead to or result in discipline, discharge, demotion, suspension, or other adverse action.

(d) The protections provided by this section apply to a person who mistakenly but in good faith alleges a violation of this chapter.

50-12-109.

(a) An employer who violates § 50-12-107 or § 50-12-108 is liable for damages and equitable relief as is provided under 29 U.S.C. § 2617(a). An employee may bring a civil action to recover damages or equitable relief against an employer who violates § 50-12-107 or § 50-12-108 in the manner prescribed in 29 U.S.C. § 2617(a).

(b) The commissioner shall administer this chapter. The commissioner is authorized to:

(1) Promulgate rules to effectuate this chapter; provided, that the rules are promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5;

(2) Employ persons, make expenditures, and require reports to effectuate this chapter; and

(3) Investigate potential violations of this chapter and take other action as deemed necessary or suitable to effectuate this chapter.

50-12-110.

(a)

(1) If time taken with wage replacement under this chapter also qualifies as a reason for leave under the federal Family and Medical Leave Act of 1993 (FMLA) (29 U.S.C. § 2601 et seq.), then time paid for pursuant to this chapter must run concurrently with leave taken under the FMLA.

(2) An employer may require that payment made pursuant to this chapter be made concurrently or otherwise coordinated with payment made or leave allowed under the terms of disability or family care leave under a collective bargaining agreement or employer policy. The employer shall give individuals in its employ written notice of this requirement when the employee requests leave

under this chapter, or when the employer acquires knowledge that an employee's leave may be for a qualifying reason under § 50-12-103(a).

(b)

(1) This chapter does not diminish an employer's obligation to comply with a collective bargaining agreement or employer policy, as applicable, that provides greater leave for a purpose provided in § 50-12-103(a).

(2) An agreement by a person to waive the person's rights under this chapter is void as against public policy.

50-12-111.

(a) Claims for benefits must be made in accordance with rules the commissioner prescribes.

(b) Except as provided by subsection (c), a claimant dissatisfied with a determination with respect to eligibility under this chapter, or the amount of benefits determined payable under this chapter, may appeal in the manner provided in § 50-7-304(c).

(c) The claimant has ninety (90) days from the date of notification of the determination of eligibility and amount of benefits to appeal the determination in the manner provided in subsection (b).

50-12-112.

(a) A covered individual is disqualified from family and medical leave insurance benefits for one (1) year if the individual knowingly makes a false statement or misrepresentation regarding a material fact, or knowingly fails to report a material fact, to obtain benefits under this chapter.

(b) If family and medical leave insurance benefits are paid erroneously or as a result of knowing misrepresentation, or if a claim for family and medical leave benefits is

rejected after benefits are paid, then the department may seek repayment of benefits from the recipient. The commissioner has discretion to waive, in whole or in part, repayment as described in this subsection (b) where the repayment would be against equity and good conscience.

50-12-113.

(a) A self-employed person, including a sole proprietor, partner, or joint venturer, may elect coverage under this chapter for an initial period of not less than three (3) years or a subsequent period of not less than one (1) year immediately following another period of coverage. The self-employed person must file a notice of election in writing with the commissioner, as required by the department. The election becomes effective on the date of filing the notice.

(b) A self-employed person who has elected coverage may withdraw from coverage within thirty (30) days after the end of the three-year period of coverage, or at other times as the commissioner may prescribe by rule, by filing written notice with the commissioner, the withdrawal to take effect not sooner than thirty (30) days after filing the notice.

50-12-114.

(a) The department shall establish and administer a family and medical leave insurance program using moneys from the family and medical leave insurance fund established pursuant to § 50-12-116 and pay family and medical leave insurance benefits as specified in this chapter.

(b) The department shall establish procedures and forms for filing claims for benefits under this chapter. The department shall notify the employer within five (5) business days of the department's receipt of a claim being filed pursuant to this chapter.

(c) The department shall use information sharing and integration technology to facilitate the disclosure of relevant information or records if the applicable person consents to the disclosure in the manner provided by applicable law.

(d) Information contained in the files and records pertaining to a person under this chapter are confidential and not open to public inspection under title 10, chapter 7, part 5, other than to public employees in the performance of their official duties. However, a person, or an authorized representative of a person, may review the records or receive specific information from the records on the presentation of the signed authorization of the person.

(e) The commissioner may promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, as necessary to implement this chapter. In promulgating rules, the commissioner shall maintain, to the extent possible, consistency with the rules promulgated to implement the federal Family and Medical Leave Act of 1993 (29 U.S.C. § 2601 et seq.).

50-12-115.

If the internal revenue service determines that family and medical leave insurance benefits under this chapter are subject to federal income tax, then the department must advise a person filing a new claim for family and medical leave insurance benefits, at the time the person files the claim, that:

(1) The internal revenue service has determined that benefits are subject to federal income tax; and

(2) Requirements exist pertaining to estimated tax payments.

50-12-116.

(a) The family and medical leave insurance fund ("the fund") is created in the custody of the state treasurer. Expenditures from the fund may be used only for the

purposes of the family and medical leave insurance program. Interest earned on the investment of moneys in the fund, and moneys remaining in the fund at the end of a fiscal year, remain in the fund and do not revert to the general fund or another fund. Money from the general fund must not be appropriated to the fund. The fund itself must be self-sustaining and cover all costs to administer the program.

(b) Whenever, in the judgment of the state treasurer, there are in the family and medical leave insurance fund moneys in excess of that amount deemed by the state treasurer to be sufficient to meet the current expenditures properly payable for the purposes of the family and medical leave insurance program, the state treasurer may invest, reinvest, manage, contract, sell, or exchange investments acquired with the excess funds in the manner prescribed by title 9, chapter 4, parts 1-4, 6, and 7.

50-12-117.

(a) An employee may take, at the option of the employee, family and medical leave on an intermittent leave schedule.

(b) The employee must make a reasonable effort to schedule intermittent leave so as not to unduly disrupt the operations of the employer. The employee shall provide the employer with prior notice of the care, medical treatment, or continuing supervision by a healthcare provider necessary due to a serious health condition of a family member, in a manner that is reasonable and practicable. Leave taken on an intermittent leave schedule does not result in a reduction of the total amount of leave to which an employee is entitled beyond the amount of leave actually taken.

50-12-118.

No later than April 1, 2027, and by April 1 of each subsequent year, the department shall report to the general assembly on projected and actual program participation, premium rates, fund balances, and outreach efforts.

50-12-119.

The department shall conduct a public education campaign to inform workers and employers regarding the availability of paid family leave and medical leave. The department may use a portion of the funds collected for the paid family and medical leave insurance program in a given year to pay for the public education campaign. Outreach information must be available in English and other languages spoken by more than ten percent (10%) of the state's population as that group's primary language.

50-12-120.

The department is encouraged to use state data collection and technology to the extent possible in order to keep the cost of the family and medical leave insurance program down and to integrate the program with existing state policies.

50-12-121.

(a) An employer shall provide written notice as described in this subsection (a) to an employee upon hiring, and each calendar year after hiring. An employer shall also provide written notice to an employee when the employee requests leave under this chapter, or when the employer acquires knowledge that an employee's leave may be for a qualifying reason under § 50-12-103(a). The notice must include a statement:

- (1) About the employee's right to family and medical leave insurance benefits under this chapter and the terms under which it may be used;
- (2) About the amount of family and medical leave insurance benefits;
- (3) About the procedure for filing a claim for benefits;
- (4) About the right to job protection and benefits continuation under § 50-12-107;

(5) That discrimination and retaliatory personnel actions against a person for requesting, applying for, or using family and medical leave insurance benefits are prohibited under § 50-12-108;

(6) Informing the employee whether the employer requires that payment made pursuant to this chapter be made concurrently or otherwise coordinated with payment made or leave allowed under the terms of disability or family care leave under a collective bargaining agreement or employer policy under § 50-12-110; and

(7) That the employee has a right to file a complaint for a violation of this chapter.

(b) An employer shall also display and maintain a poster in a conspicuous place that is accessible to employees at the employer's place of business that contains the information required by subsection (a) in English, Spanish, and any language that is the first language spoken by at least ten percent (10%) of the employer's workforce, as long as the notice has been made publicly available by the department. The commissioner may adopt rules to establish additional requirements concerning the means by which employers provide the notice described in this subsection (b).

50-12-122.

If a provision of this chapter or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to that end the provisions of this chapter are severable.

SECTION 2. For purposes of promulgating rules, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect January 1, 2024, the public welfare requiring it.